IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 103 of 1999

with

COMPANY PETITION No 47 of 1999

with

COMPANY PETITION NO.314 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

WEIZMANN LTD.

Versus

SUNSTAR CHEMICALS LTD.

Appearance:

1. COMPANY PETITION No. 103 of 1999
   MR RS SANJANWALA for Petitioner No. 1
   SERVED BY RPAD - (N) for Respondent No. 1
2. COMPANY PETITION No. 47 of 1999
   MR AC GANDHI for Petitioner No. 1

3. COMPANY PETITION NO.314 OF 2000

MR PAVAN GODIAWALA for the Petitioner

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/02/2002

COMMON ORAL JUDGEMENT

In all these three petitions, the respective petitioners, who are creditors of M/s Sunstar Chemicals Limited ("the respondent-company" for brevity) have sought orders for winding up of the respondent-company under the provisions of Section 433 read with Section 434 of the Companies Act, 1956 ("the Act" for brevity). Since the petitions are against the same respondent-company, all these petitions are being disposed of by this common judgement.

2 Company Petition No.103 of 1999 is filed by Weizmann Limited on the ground that the respondent-company had purchased Travellers Cheques to the tune of US $ 9000 at the price of Rs.3,37,876 on 16.9.1997.However the cheque dated 19.9.1997 given by the respondent-company towards the said payment was dishonoured on presentation on several occasions. Hence, the respondent-company issued fresh cheque of Rs.1 lakh and another cheque for Rs.2,35,000. Though the cheque for Rs.1,00,000 was honoured, the cheque for Rs.2,35,000/- was dishonoured with the remark "exceeds arrangement". In spite of service of notice under Section 138 of the Negotiable Instruments Act, the respondent-company failed to pay the aforesaid amount to the petitioner. Hence, the petitioner served the respondent-company with the statutory notice dated 2.12.1998. In spite of service of the notice the respondent-company neither sent any reply thereto nor complied with the same. Hence, the petitioner filed the present petition for winding up of the respondent-company. In spite of service of notice in August 1999, the respondent-company did not appear before this Court. Hence, this Court admitted the petition on 19.8.1999 and the order order for advertisement of the notice of admission was also passed on the same date. The advertisement was published in Gujarat Samachar dated 11.9.1999 (page 9) and in Indian Express dated 11.9.1999. The petition has come up for final hearing today.

3 Company Petition No.47 of 1999 is filed by M/s Archit Polymers Private Limited for winding up of the

respondent-company on the ground that the respondent-company has not paid the petitioner its dues to the tune of Rs.8,65,561 for supply of goods and that in spite of service of statutory notice dated 02.12.1998 the respondent-company did not give any reply nor did it comply with the notice. Hence, the present petition came to be filed for winding up of the respondent-company. In spite of service of notice none appeared for the respondent-company and therefore on 26.9.1999 this Court directed that the petition be heard with Company Petition No.103 of 1999. That is how this petition has also come for final hearing.

4 Company Petition No.314 of 2000 is filed by M/s Mafatlal Finace Company Limited for winding up of the respondent-company on the ground that the respondent-company has not paid the petitioner its dues to the tune of Rs.19,26,000/- for supply of the equipment as per the agreement dated 30.9.1995 and that the respondent-company had also committed defaults in the payment of hire charges to the petitioner. Hence, the petitioner is entitled to recover a sum of Rs.27,26,773 as on 27.2.2000 inclusive of interest till that date. In this petition also in spite of service of notice on the respondent-company in January 2001, none appeared for the respondent-company. Hence, this Court directed that this petition be heard with Company Petition No.103 of 1999. That is how this petition has also come for final hearing.

5 All these petitions have come up for final hearing today. However, today also when the matters are called out none appears for the respondent-company. The notice of admission of the petition was already published in two newspapers on 11.9.1999. None appears for the respondent-company nor is there any opposition to the prayer for winding up of the respondent-company. In absence of any reply to the statutory notice given by the petitioning creditors and in absence of any reply to the petitions, the Court safely proceeds on the basis that the respondent-company owes amounts to the tune of Rs.3,35,876 to the petitioner in Company Petition No.103 of 1999, Rs.8,65,561/- to the petitioner in Company Petition No.47 of 1999 and Rs.27,26,773 to the petitioner in Company Petition No.314 of 2000.

6 In view of the aforesaid, it must be held that the respondent-company is unable to pay its debts as contemplated by provisions of Sections 433 read with Section 434 of the Companies Act, 1956. In view of the above discussion, the respondent-company, Sunstar

Chemicals Limited, is ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Official Liquidator of the respondent-company. The Official Liquidator shall take over the assets of the company and get the inventory and valuation of the assets of the company made as expeditiously as possible and in any case within one month from today. The Official Liquidator shall comply with all other formalities in accordance with the Companies Act, 1956, and exercise the powers and discharge the duties in accordance with the provisions thereof.

7 All these petitions are disposed of accordingly.

(M.S. Shah, J.)
(mohd)